

ECCLESIASTICAL JURISDICTION AND CARE OF CHURCHES MEASURE 2018

AS MODIFIED FOR THE ISLE OF MAN

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NOTES

STATUS OF TEXT

The text of the Measure is shown as modified for the Isle of Man by the Ecclesiastical Jurisdiction and Care of Churches Measure (Isle of Man) 2019 (SM 2 of 2019). The text is as in force on 1 July 2019.

COMMENCEMENT

The Measure comes into force in the Isle of Man on 1 July 2019, except so far as it relates to the constitution of the Diocesan Advisory Committee, by virtue of the Ecclesiastical Jurisdiction and Care of Churches Measure (Isle of Man) 2019 (Appointed Day) (No.1) Order 2019 (SD 2019/270).

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AS MODIFIED FOR THE ISLE OF MAN

PART 1 — THE ECCLESIASTICAL COURTS

The consistory courts

1 The consistory courts: continuation

- (1) For each diocese there is to continue to be a court of the bishop of the diocese.
- (2) The court is to continue to be known as the consistory court of the diocese ...

2 Judge: appointment

- (1) The consistory court of a diocese is to be presided over by a single judge, appointed by the bishop of the diocese by letters patent.
- (2) The judge is to continue to be known as the chancellor of the diocese **or the Vicar General of the diocese.** ...
- (4) A person may be appointed as chancellor of a diocese only if the person —
 - (a) holds or has held high judicial office, or
 - (b) is a barrister or solicitor, or an advocate of the Manx bar, of at least 7 years' standing.**
- (5) A lay person may be appointed as chancellor of a diocese only if the bishop is satisfied that the person is a communicant.
- (6) Before appointing a person as chancellor of a diocese, the bishop must consult— ...
 - (b) the Dean of the Arches and Auditor.

3 Judge: term of office

- (1) The term of a person's appointment as chancellor of a diocese—
 - (a) begins with the date of the appointment, and
 - (b) subject to the following provisions of this section, ends with the day on which the person reaches the age of 70.
- (2) The chancellor of a diocese may resign the office by instrument in writing signed by him or her and addressed to, and served on, the bishop of the diocese.
- (3) The bishop of a diocese may remove the chancellor of the diocese from office if the Upper House of the Convocation of the province concerned resolves that he or she is incapable of acting or unfit to act; and such a resolution must be filed in the registry of the province concerned.
- (4) Where, during the course of proceedings in the consistory court, the chancellor of the diocese reaches the age of 70, he or she may continue to act as chancellor for the purposes of the proceedings as if the day on which the

proceedings concluded in that court were the day on which he or she reached that age.

- (5) Where the bishop of a diocese considers that it would be desirable in the interests of the diocese to retain the chancellor in office after the date on which he or she would otherwise retire under subsection (1) or (4), the bishop may authorise the continuance in office of the chancellor after that date for a period of up to two years.
- (6) The bishop of a diocese may authorise the further continuance in office of the chancellor of the diocese for periods of up to one year at a time.
- (7) The period during which a person remains in office as chancellor may not be continued under subsection (5) or (6) beyond the date on which the person reaches the age of 75.
- (8) Before authorising a period of continuance under subsection (5) or (6), the bishop must consult the Dean of the Arches and Auditor.
- (9) Where the chancellor of a diocese is continuing in office under subsection (5) or (6) and, during the course of proceedings in the consistory court, the period of continuance under that subsection expires, he or she may continue to act as chancellor for the purposes of the proceedings as if the day on which the proceedings concluded in that court were the day on which the period of continuance expired.

4 Deputy judge: appointment and term of office

- (1) The chancellor of a diocese, with the consent of the bishop of the diocese, may in writing appoint a fit and proper person to act as deputy chancellor of the diocese.
- (2) Where the chancellor of a diocese is for any reason unable to act, the bishop of the diocese may in writing appoint a fit and proper person to act as deputy chancellor of the diocese during the period in which the chancellor is unable to act.
- (3) Where the chancellor of a diocese notifies the bishop of the diocese that it would be inappropriate for him or her or for a deputy chancellor appointed under subsection (1) to act for the purposes of the proceedings to which the notification relates, the bishop of the diocese may in writing appoint a fit and proper person to act as deputy chancellor for those purposes.
- (4) Where the office of chancellor of a diocese is vacant, the bishop of the diocese may in writing appoint a fit and proper person to act as deputy chancellor of the diocese during the vacancy.
- (5) A deputy chancellor has the same powers and duties as the chancellor for whom he or she is deputy.

- (6) The qualifications for an appointment under this section are the same as those for the appointment of a chancellor under section 2; accordingly, subsections (4) and (5) of that section apply to an appointment under this section as they apply to an appointment under that section.
- (7) The appointment of a person as a deputy under subsection (1) continues—
- for so long as the chancellor who made the appointment continues in office and then for a period of **six months** beginning with the date on which the chancellor ceases to hold office, or
 - if before the end of that period the deputy reaches the age at which the chancellor would be required to vacate office under section 3(1), until the day on which the deputy reaches that age.
- (8) A deputy chancellor appointed under subsection (1) may resign the office by notice in writing addressed to the chancellor.
- (9) The chancellor of a diocese may, after consultation with the bishop of the diocese, remove a deputy chancellor appointed under subsection (1) from office if the chancellor considers that he or she is incapable of acting or unfit to act.
- (10) Where, during the course of proceedings in the consistory court in which the deputy chancellor of the diocese is acting as chancellor, the person's appointment as deputy chancellor would (but for this subsection) end under subsection (7), the person may continue to act as chancellor for the purposes of the proceedings as if the day on which the proceedings concluded in that court were the day on which the appointment ends under subsection (7).

6 Judge and deputy judge: oaths

- (1) The chancellor or deputy chancellor of a diocese must, before entering on the execution of the office, take the following oaths—
- "I, , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her Heirs and successors, according to law. So help me God."
- "I, , do swear that I will, to the uttermost of my understanding, deal uprightly and justly in my office, without respect of favour or reward. So help me God."
- (2) The oaths **referred to in subsection (1)** must be taken—
- before the bishop of the diocese in the presence of the diocesan registrar, or
 - in open court in the presence of the diocesan registrar.

- (3) The diocesan registrar must record the taking of the oaths and file the record in the diocesan registry.
- (4) **The chancellor of the diocese of Sodor and Man must, before entering on the execution of the office, take and subscribe before a Deemster the oath heretofore taken and subscribed before a Deemster by the chancellor of that diocese on appointment to that office.**

7 Jurisdiction

- (1) The consistory court of a diocese has jurisdiction to hear and determine—
- proceedings for obtaining a faculty to authorise an act relating to land in the diocese, or to something on, in or otherwise appertaining to land there, for which a faculty is required;
 - proceedings for an order under section 53(8)(delivery of article to place of safety);
 - ...
 - proceedings for an injunction under section 71 or a restoration order under section 72;
 - proceedings under **paragraph 11 of Schedule 3 to the Mission and Pastoral Measure (Isle of Man) 2012** (compensation for loss of burial rights) ;
 - proceedings upon a jus patronatus awarded by the bishop of the diocese;
 - any other proceedings which, immediately before the passing of the Ecclesiastical Jurisdiction Measure 1963 on 31 July 1963, the court had power to determine (except proceedings the jurisdiction for which was expressly abolished by that Measure).
- (2) Criminal proceedings may not be brought in the consistory court of a diocese.
- (3) "Land" includes messuages, tenements and hereditaments, houses and buildings of any tenure.

8 Proceedings

Proceedings in the consistory court of a diocese are to be heard and disposed of by the chancellor of the diocese.

The chapter court

8A The chapter court

- (1) **There shall continue to be a chapter court for the diocese of Sodor and Man.**
- (2) **The chancellor of the diocese of Sodor and Man is the judge of the chapter court.**
- (3) **The chancellor is to continue to exercise the jurisdiction and functions of that court.**

The Arches and Chancery Courts

9 The Arches and Chancery Courts: continuation

- (1) For each province there is to continue to be a court of the archbishop.
- (2) The court for the province of Canterbury is to continue to be known as the Arches Court of Canterbury.
- (3) The court for the province of York is to continue to be known as the Chancery Court of York.

10 Judges: appointment

- (1) The following persons are both the judges of the Arches Court of Canterbury and the judges of the Chancery Court of York—
 - (a) the judge appointed as mentioned in subsection (2), and
 - (b) the chancellor of each diocese in each province, other than the chancellor of the diocese in Europe.
- (2) The judge referred to in subsection (1)(a) is appointed by the Archbishops of Canterbury and York acting jointly with the approval of Her Majesty signified by warrant under the sign manual.
- (3) That judge is to continue to be known as the Dean of the Arches and Auditor, being styled as—
 - (a) Dean of the Arches, in relation to the jurisdiction in the province of Canterbury, and
 - (b) Auditor, in relation to the jurisdiction in the province of York.
- (4) A person may be appointed as the Dean of the Arches and Auditor only if the person—
 - (a) holds or has held high judicial office, or
 - (b) has the qualifications required for appointment as a Lord Justice of Appeal.
- (5) A lay person may be appointed as the Dean of the Arches and Auditor only if the Archbishops of Canterbury and York are satisfied that the person is a communicant.
- (6) Subsection (1) does not apply in relation to proceedings on an appeal under section 20 of the Clergy Discipline Measure 2003; for provision as to the judges of each Court in proceedings of that kind, see section 3 of the Ecclesiastical Jurisdiction Measure 1963.

11 The Dean of the Arches and Auditor: term of office

- (1) The term of a person's appointment as the Dean of the Arches and Auditor—
 - (a) begins with the date of the appointment, and

(b) subject to the following provisions of this section, ends with the day on which the person reaches the age of 75.

- (2) The Dean of the Arches and Auditor may resign the office by instrument in writing signed by him or her and addressed to, and served on, the Archbishops of Canterbury and York.
- (3) The Archbishops of Canterbury and York acting jointly may remove the Dean of the Arches and Auditor from office if the Upper House of each of the Convocations resolves that he or she is incapable of acting or unfit to act; and such a resolution must be filed in the registry of the province concerned.
- (4) Where the Dean of the Arches and Auditor reaches the age of 75 during the course of proceedings in the Arches Court of Canterbury or the Chancery Court of York, he or she may continue to act as a judge for the purposes of those proceedings as if the day on which the proceedings concluded in that Court were the day on which he or she reached that age.

12 Deputy Dean of the Arches and Auditor: appointment and term of office

- (1) The Dean of the Arches and Auditor may, with the consent of the Archbishops of Canterbury and York, appoint a fit and proper person to act as deputy Dean of the Arches and Auditor for such period not exceeding 12 months, or for such purpose, as is specified in the instrument of appointment.
- (2) Where the Dean of the Arches and Auditor is for any reason unable to act or the office of the Dean is vacant, the Archbishops of Canterbury and York acting jointly may in writing appoint a fit and proper person to act as deputy Dean of the Arches and Auditor during the period of inability or the vacancy.
- (3) A person appointed as deputy under this section has the same powers and duties as the Dean of the Arches and Auditor; but in the case of an appointment under subsection (1) for a specified purpose, the reference to having those powers and duties is a reference to having them for that purpose only.
- (4) The qualifications for an appointment under this section are the same as those for the appointment of the Dean of the Arches and Auditor under section 10; accordingly, subsections (4) and (5) of that section apply to an appointment under this section as they apply to an appointment under that section.

13 Judges: oaths

- (1) The Dean of the Arches and Auditor and any person appointed as deputy who is not the chancellor of a diocese must, before entering on

the execution of the office of judge of the Arches Court of Canterbury or the Chancery Court of York, take the following oaths—

"I, , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her Heirs and successors, according to law. So help me God."

"I, , do swear that I will, to the uttermost of my understanding, deal uprightly and justly in my office, without respect of favour or reward. So help me God."

- (2) The oaths must be taken—
 - (a) before the Archbishop of Canterbury in the presence of the registrar of the province of Canterbury and before the Archbishop of York in the presence of the registrar of the province of York, or
 - (b) in open court in each province in the presence of the registrar of the province.
- (3) The registrar of each province must record the taking of the oaths and file the record in the provincial registry.

14 Jurisdiction

- (1) **The Chancery Court of York** has jurisdiction to hear and determine an appeal from a judgment, order or decree of the consistory court of a diocese in the province concerned—
 - (a) in proceedings for obtaining a faculty, or
 - (b) in proceedings of the kind mentioned in section 7(1)(d) or (h), unless the appeal to any extent relates to matter involving doctrine, ritual or ceremonial (as to which, see section 18). ...
- (3) The Chancery Court of York has jurisdiction to hear and determine an appeal from a judgment, order or decree of the Vicar-General's court of York (except as constituted in accordance with the Clergy Discipline Measure 2003).
- (4) An appeal under this section may be brought by any party to the proceedings with the permission—
 - (a) in a case within subsection (1), of the consistory court or the Dean of the Arches and Auditor, or
 - (b) in a case within subsection ... (3), of the Vicar-General's court or the Dean of the Arches and Auditor.
- (5) In proceedings pending in the consistory court of a diocese, **the Chancery Court of York** has jurisdiction, either on its own motion or on the application of a party to the proceedings, to give directions as to the further conduct of the proceedings, if it considers that—
 - (a) there has been inordinate delay in the conduct of the proceedings, or

(b) it is otherwise in the interests of justice.

- (6) In acting under subsection (5), the Court may give any direction which the chancellor has power to give.

15 Proceedings

- (1) Proceedings under this Measure in ... the Chancery Court of York are to be heard and disposed of by—
 - (a) the Dean of the Arches and Auditor, and
 - (b) two chancellors designated by the Dean for the purposes of the case in question.
- (2) The Dean of the Arches and Auditor, sitting alone in **that Court**, has jurisdiction to make interim orders, including directions under section 14(5) (cases involving inordinate delay etc.).
- (3) Proceedings under this Measure in **that Court** are to be brought and conducted in such manner as rules may specify.

The Court of Ecclesiastical Causes Reserved

16 The Court of Ecclesiastical Causes Reserved: continuation

For both provinces, there is to continue to be a court called the Court of Ecclesiastical Causes Reserved.

17 Judges: appointment

- (1) The Court of Ecclesiastical Causes Reserved is constituted of five judges, appointed by Her Majesty.
- (2) Two of the five judges must be persons each of whom—
 - (a) holds or has held high judicial office, and
 - (b) has made a declaration that he or she is a communicant.
- (3) Three of the five judges must be persons each of whom is or has been a diocesan bishop.

18 Jurisdiction

- (1) The Court of Ecclesiastical Causes Reserved has jurisdiction to hear and determine an appeal from a judgment, order or decree of a consistory court—
 - (a) in proceedings for obtaining a faculty, or
 - (b) in proceedings of the kind mentioned in section 7(1)(d) or (h), where the appeal to any extent relates to matter involving doctrine, ritual or ceremonial.
- (2) The Court of Ecclesiastical Causes Reserved has jurisdiction to hear and determine all suits of duplex querela.
- (3) An appeal under this section may be brought by any party to the proceedings.
- (4) For the purpose of determining whether an appeal from a judgment, order or decree of a consistory

court is to be brought under section 14(1) or under this section, the chancellor must, on the application of the party wishing to appeal, certify whether the proposed appeal relates to any extent to matter involving doctrine, ritual or ceremonial.

- (5) If, in proceedings on an appeal from a judgment, order or decree of a consistory court, the Court of Ecclesiastical Causes Reserved considers that it has heard and determined the appeal in so far as it relates to matter involving doctrine, ritual or ceremonial but that the appeal also relates to other matter—
 - (a) it may deal with the other matter if it considers it expedient to do so, but
 - (b) otherwise, it must refer the other matter to ... the Chancery Court of York ... for it to hear and determine.
- (6) If, in proceedings on an appeal from a judgment, order or decree of a consistory court, the Court of Ecclesiastical Causes Reserved considers that no matter of doctrine, ritual or ceremonial is involved, it must refer the appeal (despite any certificate to the contrary under subsection (4)) to ... the Chancery Court of York ...for it to hear and determine.
- (7) If, in proceedings on an appeal from a judgment, order or decree of a consistory court, ... the Chancery Court of York considers that the appeal to any extent relates to matter involving doctrine, ritual or ceremonial, it must refer the appeal (despite any certificate to the contrary under subsection (4)) to the Court of Ecclesiastical Causes Reserved for it to hear and determine.
- (8) Where the Dean of the Arches and Auditor and the two judges referred to in section 17(2) jointly issue practice directions about the reference of an appeal under subsections (5) to (7), the reference must, subject to rules, be made in accordance with those practice directions.
- (9) In the exercise of its jurisdiction under this Measure, the Court of Ecclesiastical Causes Reserved is not bound by any decision of the Judicial Committee of the Privy Council in relation to matter of doctrine, ritual or ceremonial.

Commissions of review

19 Commissions of review: continuation

- (1) There is to continue to be power for Her Majesty to appoint commissioners who are to have jurisdiction to review a finding of the Court of Ecclesiastical Causes Reserved in proceedings under section 18.
- (2) A party to proceedings in the Court of Ecclesiastical Causes Reserved under section 18 may lodge with the Clerk of the Crown in Chancery a petition addressed to Her Majesty

praying that She will be pleased to cause a finding of the Court in those proceedings to be reviewed.

- (3) A petition under this section—
 - (a) must be in the form specified in rules;
 - (b) must be lodged with the Clerk of the Crown in Chancery within the period so specified after the finding to which it relates.
- (4) On a petition being lodged under this section, a commission must be directed under the Great Seal to such five persons as Her Majesty may nominate to review the finding to which the petition relates.
- (5) Three of the nominees under subsection (4) must be persons each of whom—
 - (a) is a judge of the Supreme Court or a member of the supplementary panel under section 39 of the Constitutional Reform Act 2005, and
 - (b) has made a declaration that he or she is a communicant.
- (6) Two of the nominees under subsection (4) must be Lords Spiritual in the House of Lords.
- (7) A commission appointed under this section is to be known as a Commission of Review.

20 Proceedings

- (1) Proceedings before a Commission of Review exercising jurisdiction under this Measure are, subject to this section, to be brought and conducted in such manner as rules may specify.
- (2) To assist a Commission of Review on a review under this Measure of a decision of the Court of Ecclesiastical Causes Reserved involving a question of doctrine, the Upper House of each the Convocations must jointly appoint a panel of persons, in such numbers as those Houses may determine, consisting of—
 - (a) members of either House, and
 - (b) if the Houses think fit, theologians who are not members of either House.
- (3) Where a review under this Measure by a Commission of Review involves a question of doctrine, the Commission must request five persons selected by it from the panel appointed under subsection (2) —
 - (a) to sit with it as advisers, and
 - (b) to give such assistance on the matters of doctrine involved in the review as the Commission may require.
- (4) The judgment of the Commission must accord with the opinion of the majority of its members; and each member of the Commission must state his or her own opinion on the question under review.
- (5) In the exercise of its jurisdiction under this Measure, a Commission of Review is not bound by any decision of the Judicial Committee of the

Privy Council in relation to matter of doctrine, ritual or ceremonial.

- (6) A decision of a Commission of Review under this Measure or the Ecclesiastical Jurisdiction Measure 1963 is binding on a subsequent Commission under this Measure, except in relation to a matter on which new information or evidence is adduced which was not before the previous Commission.

Privy Council appeals

21 Appellate jurisdiction of Her Majesty in Council

- (1) Her Majesty in Council has jurisdiction to hear and determine an appeal from a judgment of ... the Chancery Court of York in proceedings under section 14(1)(a)(appeals in faculty cases).
- (2) An appeal under this section may be brought by any party to the proceedings with the permission of Her Majesty in Council.

Miscellaneous

22 Vacancy in see etc.

...

- (2) A vacancy in the see of York does not affect the exercise of jurisdiction by the Chancery Court of York.
- (3) A vacancy in the see of ... York does not affect the exercise of jurisdiction by the Vicar-General's court of the province in question.
- (4) A vacancy in the see of ... York or of the bishop of any other diocese does not affect the exercise of jurisdiction by the consistory court of the diocese in question.
- (5) A vacancy in a see as mentioned in this section does not affect the discharge of functions by a judge, member or officer of a court referred to in this section.
- (6) A vacancy in an archiepiscopal or diocesan see does not affect the discharge by the Vicar-General of the province or diocese in question or **by a surrogate** of the functions of the Vicar-General or surrogate.
- (7) The appointment of a person as chancellor, registrar or Vicar-General of a diocese is not terminated merely because—
- (a) a vacancy in the diocesan see is terminated,
...
- (8) The appointment of a person as Vicar-General of a province is not terminated merely because—
- (a) a vacancy in the archiepiscopal see is terminated, and
- (b) the appointment has not previously been confirmed by the metropolitan church of the diocese.

- (9) The appointment of a person as a surrogate ... is not terminated merely because a vacancy occurs in the **diocesan see**.

23 Officials Principal etc.

- (1) The Dean of the Arches and Auditor is, by virtue of that office, to continue to be the Official Principal of the Archbishop of Canterbury and the Official Principal of the Archbishop of York in the capacity each has as Metropolitan.
- (2) The Dean of the Arches and Auditor is to continue to be Master of the Faculties to the Archbishop of Canterbury.
- (3) The chancellor of a diocese is, by virtue of that office, to continue to be the Official Principal of the bishop of the diocese.

24 Place where courts etc. to sit

Proceedings of a court or commission exercising jurisdiction under this Measure may be held in any place convenient to it, due regard being had to the convenience of parties and witnesses.

25 Evidence and contempt

- (1) A court or commission exercising jurisdiction under this Measure has the same powers as the High Court in relation to—
- (a) the attendance and examination of witnesses, and
- (b) the production and inspection of documents.
- (2) Subsection (3) applies if a person does or omits to do something in connection with proceedings before, or in connection with an order made by, a court or commission exercising jurisdiction under this Measure—
- (a) which is in contempt of that court or commission by virtue of an enactment, or
- (b) which would be in contempt of that court or commission if it had power to commit for contempt.
- (3) The judge or presiding judge of the court or the presiding member of the commission may send to the High Court a certificate under his or her hand stating the act or omission.
- (4) The High Court may—
- (a) on receiving a certificate under subsection (3), inquire into the alleged act or omission, and
- (b) after hearing any witness for or against the person subject to the allegation and any statement in defence, exercise the same jurisdiction and powers as if the person were guilty of contempt of the High Court.
- (5) In subsection (2), "order" includes—
- (a) a special citation under section 70,
- (b) an injunction under section 71, ...

26 Costs

- (1) A court or commission exercising jurisdiction under this Measure may at any stage of proceedings before it order a party to give security for costs.
- (2) A court or commission exercising jurisdiction under this Measure may make an order against a party to proceedings before it for payment of—
 - (a) taxed costs,
 - (b) a specified proportion of the taxed costs,
 - (c) the taxed costs from or up to a specified stage of the proceedings, or
 - (d) a specified gross sum in lieu of taxed costs.
- (3) The power to tax costs under this section is exercisable by a registrar; and the power must be exercised in such manner as rules may specify.
- (4) Where an order for payment of costs is made under subsection (2)(a), (b) or (c), a party to the proceedings may appeal against the registrar's taxation to the chancellor of the diocese in which the proceedings were brought.
- (5) An appeal under subsection (4) is to be lodged and conducted in such manner as rules may specify.
- (6) On an appeal under subsection (4), the chancellor may confirm or vary the registrar's taxation.
- (7) **Costs ordered to be paid under this section are recoverable as if the order were a judgment or order of the High Court for the payment of money.**
- (8) For the purposes of subsection (7), a certificate stating that the sum specified is the sum due to be paid by the person referred to, and purporting to be signed by the registrar of the diocese or province in which the order for costs was made, is conclusive evidence of the facts certified.
- (9) In this section, "costs" includes fees, charges, disbursements, expenses and remuneration.

27 Other ecclesiastical jurisdictions

Schedule 1 (which makes provision in relation to other ecclesiastical jurisdictions) has effect.

PART 3 — CARE OF CHURCHES ETC.

General duty

35 Duty to have regard to church's purpose

A person carrying out functions of care and conservation under this Measure, or under any other enactment or any rule of law relating to churches, must have due regard to the role of a church as a local centre of worship and mission.

Diocesan Advisory Committees

36 Advisory committees: continuation

- (1) *In every diocese there is to continue to be an advisory committee for the care of churches, known as the Diocesan Advisory Committee.*
- (2) **Schedule 2 has effect as to the constitution of the advisory committee.**
- (3) **The diocesan synod may by resolution —**
 - (a) *amend Schedule 2; or*
 - (b) *make provision as to the proceedings of the advisory committee.*

NOTE Section 36 is not yet in force. For the constitution of the DAC see Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s.2.

37 Advisory committees: functions

- (1) The advisory committee must act as an advisory body on matters affecting places of worship in the diocese and, in particular, must give advice when requested by a relevant person on matters relating to—
 - (a) the grant of faculties,
 - (b) the architecture, archaeology, art or history of a place of worship,
 - (c) the use, care, planning, design or closure of a place of worship,
 - (d) the use or care of the contents of a place of worship, or
 - (e) the use or care of a churchyard or burial ground.
- (2) Each of the following is a "relevant person" for the purposes of subsection (1)—
 - (a) the bishop of the diocese,
 - (b) the chancellor of the diocese,
 - (c) **the archdeacon;**
 - (d) the PCC for each parish in the diocese,
 - (e) a person intending to apply for a faculty in the diocese,
 - (f) **the Church Commissioners for the Isle of Man;**
 - (g) a person engaged in the planning, design or building of a new place of worship in the diocese, not being a place within the jurisdiction of the consistory court, and
 - (h) such other persons as the committee considers appropriate.
- (3) The committee must review and assess the degree of risk to materials, or of loss to archaeological or historic remains or records, arising from proposals relating to the conservation, repair or alteration of a place of worship, churchyard or burial ground or the contents of such a place.

- (4) The committee must develop and maintain a repository of—
 - (a) records relating to the conservation, repair and alteration of places of worship, churchyards and burial grounds, and
 - (b) other material (including inspection reports, inventories, technical information and photographs) relating to the work of the committee.
- (5) The committee must issue guidance for the preparation and storage of the records referred to in subsection (4).
- (6) The committee must make recommendations as to the circumstances in which the preparation of a record of the kind referred to in subsection (4) should be made a condition of a faculty.
- (7) The committee must—
 - (a) take action to encourage the care and appreciation of places of worship, churchyards and burial grounds and the contents of such places, and
 - (b) for that purpose, publicise methods of conservation, repair, construction, adaptation and redevelopment.
- (8) The advisory committee must carry out such other functions—
 - (a) as may be imposed on it by an enactment or by a Canon;
 - (b) as may be imposed on it by a resolution of the diocesan synod;
 - (c) as it may be requested to carry out by the bishop or chancellor.
- (9) In carrying out its functions, the committee or any sub-committee it has must have due regard to the rites and ceremonies of the Church of England.
- (10) Any expenses incurred for enabling the committee to carry out its functions properly and effectively, and which were approved by the diocesan board of finance before being incurred, are to be paid by the board.
- (11) As soon as practicable after the end of each year, the committee must prepare a report of its work and proceedings during that year and must cause the report to be laid before the diocesan synod; ...

Inspection

45 Scheme for inspection of churches

- (1) In the case of each diocese, the scheme established by the diocesan synod **under section 1 of the Church Act 1979 (an Act of Tynwald)**, providing for the inspection of every church ... in the diocese at least once every five years and having effect immediately before the commencement of this section, continues to have effect.

- (2) The scheme contains—
 - (a) provision establishing a fund by means of contributions from parochial, diocesan or other sources;
 - (b) provision for the payment out of that fund or otherwise of the cost of inspecting churches ... in the diocese;
 - (c) provision for the appointment of one or more qualified persons approved by the advisory committee to inspect the churches ... in the diocese and make a report on each one inspected;
 - (d) provision, in the case of each church inspected, for a copy of the report made under paragraph (c) to be sent to—
 - (i) the archdeacon ...,
 - (ii) the PCC of the parish in which it is situated,
 - (iii) the incumbent of the benefice to which that parish belongs, and
 - (iv) the secretary of the advisory committee;
 - (f) such other provisions as were included under **section 1(2)(e) of the Church Act 1979 (an Act of Tynwald)** (power of diocesan synod ... to make provisions consistent with that Measure).
- (3) The diocesan synod may at any time establish a further scheme to replace the previous scheme ...; and a further scheme—
 - (a) must be for the purpose specified in subsection (1),
 - (b) must contain the provision specified in subsection **(2)(a) to (d)**, and
 - (c) may contain such other provision not inconsistent with this section or sections 46 to 47 as the diocesan synod thinks fit.
- (4) **A scheme established under subsection (3) and passed at a meeting of the diocesan synod comes into operation —**
 - (a) on such date as may be specified in it, or
 - (b) if no such date is specified, on the date on which it is passed. ...
- (6) "Qualified person" means—
 - (a) a person registered under the Architects Act 1976 (an Act of Tynwald), or
 - (b) a member of the Royal Institution of Chartered Surveyors who is qualified as a chartered building surveyor.

46 Inspection: contents etc.

- (1) An inspection of a church under the scheme referred to in section 45 must include an inspection of—

- (a) every movable article in the church which the inspector is directed by the archdeacon, after consultation with the advisory committee of the diocese, to treat as being—
 - (i) of outstanding architectural, artistic, historical or archaeological value,
 - (ii) of significant monetary value, or
 - (iii) at special risk of being stolen or damaged;
 - (b) every other article in the church which the inspector considers to be of the description in sub-paragraph (i), (ii) or (iii) of paragraph (a);
 - (c) every ruin in the churchyard which is designated by the **Manx Museum and National Trust** as being of outstanding architectural, artistic, historical or archaeological value; ...
- (2) Any expenses properly incurred by a PCC, with the prior approval of the diocesan board of finance, for the purpose of implementing a recommendation contained in a report made in respect of a ruin under subsection (1)(c) must be paid by the board.
- (3) A reference in this section or section 45 or 47 to the inspection of a church is to be read in light of subsection (1).
- (4) "Ruin" means a site which comprises the remains of a building which are above the surface of the land; and for this purpose "site" does not include—
- (a) a monument (within the meaning of section 66), or
 - (b) a site which is used for the purposes of public worship according to the rites and ceremonies of the Church of England.

47 Archdeacon's power to require inspection of church

- (1) This section applies where an archdeacon finds on a survey of the churches of his or her jurisdiction, or at any other time, that a church ... or a relevant article in a church ... has not been inspected to his or her satisfaction by a qualified person for at least five years.
- (2) The archdeacon may serve on the PCC of the parish in which the church is situated a written notice requiring the PCC to cause the church or relevant article to be inspected in accordance with the scheme referred to in section 45.
- (3) A relevant article, in relation to a church, is a movable article in the church which the archdeacon, after consultation with the advisory committee, considers to be—
 - (a) of outstanding architectural, artistic, historical or archaeological value,

- (b) of significant monetary value, or
 - (c) at special risk of being stolen or damaged.
- (4) At any time after the expiry of three months beginning with the date of service of a notice under subsection (2), if the church or relevant article has not in the meantime been inspected as mentioned in subsection (1), the archdeacon may, with the consent of the bishop of the diocese concerned, make arrangements for the inspection and report required by the scheme referred to in section 45 to be done.
 - (5) Where a church or relevant article is inspected under arrangements made under subsection (4), the cost of the inspection as certified by the archdeacon must be paid out of the fund established by the scheme referred to in section 45 (see subsection (2)(a) of that section).
 - (6) A notice under subsection (2) may be served by sending it by post—
 - (a) in a registered letter addressed to the secretary of the PCC by his or her name at his or her usual or last-known address, or
 - (b) if the secretary's name or residence is not known, in a registered letter addressed to the secretary by that title at the usual or last-known address of the incumbent of the parish.
 - (7) "Qualified person" has the meaning given in section 45.

Role of churchwardens, PCCs and archdeacons

49 Role of churchwardens in recording information

- (1) The churchwardens in each parish must continue to maintain the terrier and inventory which they were **required to maintain** under section 4(1)(a) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 ("the 1991 Measure") immediately before the commencement of this section, being respectively—
 - (a) a full terrier of all land appertaining to the church, and
 - (b) a full inventory of all articles appertaining to the church.
- (2) The churchwardens in each parish must continue to maintain the log-book which they were **required to maintain** under section 4(1)(b) of the 1991 Measure immediately before the commencement of this section, being a log-book which has inserted in it a full note of—
 - (a) all alterations, additions and repairs to, and other events affecting, the church and the land and articles appertaining to it, and

- (b) the location of any other documents not kept with the log-book and which relate to those alterations, additions, repairs or events.
- (3) In carrying out the duty under subsection (1) or (2), the churchwardens must act in consultation with the minister.
- (4) The form of the terrier, inventory and log-book must accord with such recommendations as the **bishop of the diocese** may make.
- (5) The churchwardens must send a copy of the inventory to such person as the bishop of the diocese may from time to time designate.
- (6) The churchwardens must notify the person designated under subsection (5) of any alterations to the inventory at such intervals as the bishop may direct.
- (7) In the case of a parish which has more than one church, this section applies in relation to each church.

50 Role of churchwardens in inspecting fabric etc. of church

- (1) The churchwardens in each parish must, at least once every calendar year, inspect or cause an inspection to be made of the fabric of the church and all articles appertaining to the church.
- (2) The churchwardens in each parish must, in every calendar year, deliver to the PCC and, on behalf of the PCC, to the annual parochial church meeting a report ("the annual fabric report") on the fabric of the church and all articles appertaining to it, having due regard to the inspection (or inspections) under subsection (1).
- (3) The annual fabric report must include an account of all actions taken or proposed during the previous calendar year—
 - (a) for the protection and maintenance of the fabric of the church and the articles appertaining to it, and
 - (b) in particular, for the implementation of any recommendation contained in a report under the scheme referred to in section 45 (scheme for inspection of church).
- (4) In carrying out the duty under subsection (1) or (2), the churchwardens must consult the minister.
- (5) The annual fabric report must be delivered—
 - (a) to the PCC at its last meeting before the annual parochial church meeting, and
 - (b) to that annual parochial church meeting, with such amendments to the report as the PCC may make.
- (6) The churchwardens must, as soon as practicable after the beginning of each calendar year, produce to the PCC—

- (a) the terrier, the inventory and the log-book relating to events occurring in the previous calendar year, and
 - (b) such other records as the churchwardens consider likely to assist the PCC in carrying out its functions in relation to the fabric of the church and articles appertaining to it.
- (7) The terrier, inventory and log-book produced to the PCC under subsection (6)(a) must be accompanied by a statement signed by the churchwardens to the effect that the contents of each are accurate.
 - (8) In the case of a parish which has more than one church, this section applies in relation to each church.

52 Role of archdeacon in convening meeting in a case of default

- (1) Where it appears to an archdeacon that something which ought to have been done in connection with the care of a church ... or an article appertaining to a church ... has not been done, the archdeacon may convene an extraordinary meeting of the PCC, or an extraordinary parochial church meeting, in order to discuss the matter.
- (2) The archdeacon must either take the chair or appoint a person to chair the meeting.
- (3) The chair of the meeting, unless otherwise entitled to attend the meeting, is not entitled to vote on any resolution before the meeting.

53 Role of archdeacon in ordering deposit of articles in place of safety

- (1) This section applies if it appears to an archdeacon that an article appertaining to a church ... which the archdeacon considers to be of architectural, artistic, historical or archaeological value—
 - (a) is exposed to danger of loss or damage, and
 - (b) ought to be removed to a place of safety.
- (2) The archdeacon may order that the article is to be removed and deposited in the place of safety specified in the order.
- (3) Before making an order under this section, the archdeacon must, unless of the opinion that the article should be removed to a place of safety immediately—
 - (a) give a notice to the churchwardens, to any other person having custody of the article, to the PCC and to the advisory committee of the facts as they appear to the archdeacon, and
 - (b) inform the persons referred to in paragraph (a) that he or she will consider any written representations made by any of them to him or her before the date specified in the notice.

- (4) The date specified for the purposes of subsection (3)(b) must be at least 28 days after the day on which the notice is given.
- (5) Where notice is given under subsection (3)(a)(and not withdrawn), the archdeacon may not make an order under this section in respect of the article before the date specified for the purposes of subsection (3)(b)(or without having considered written representations made to him or her before that date).
- (6) Where the archdeacon makes an order under this section without having given the advisory committee an opportunity to make representations to him or her in connection with the making of the order, the archdeacon must, as soon as practicable after the removal of the article concerned to a place of safety, notify the committee of the removal.
- (7) An order made under this section by the archdeacon—
 - (a) must be in such form as rules may specify;
 - (b) must be directed to, and served on, the churchwardens and any other person having custody of the article.
- (8) If a person on whom an order made under this section by the archdeacon is served refuses or fails to comply with the order, the archdeacon may apply to the consistory court of the diocese in which the article is for an order that the person must deliver the article to the place of safety specified in the order.
- (9) The court may make an order under subsection (8) if it is satisfied that the order made by the archdeacon was made in accordance with this section.
- (10) Where the archdeacon makes an order under this section, he or she must, within 28 days after the removal of the article to a place of safety, apply to the consistory court for a faculty authorising the retention of the article in the place of safety.
- (11) "Article" does not include a record or register to which **the Church Records Measure (Isle of Man) 2000** applies.

Interpretation

55 Interpretation of Part 3

- (1) In this Part, unless otherwise indicated—

"advisory committee" means the Diocesan Advisory Committee; ...

"article" includes anything affixed to land or a building, and a reference to an article includes a reference to part of an article;

"building" includes a structure or erection, and a reference to a building includes a reference to part of a building; ...

"land" includes buildings but, subject to that, the definition of the word given in Schedule 1 to the Interpretation Act 1978 does not apply;

"minister", in the case of a parish in which a special cure of souls has been assigned to a vicar in a team ministry by a scheme under the Mission and Pastoral Measure (Isle of Man) 2012 or by licence from the bishop, means that vicar;

"minister", in the case of a parish not of that description, means—

- (a) the incumbent of the benefice to which the parish belongs, or
- (b) a curate licensed to the charge of the parish or a minister acting as priest-in-charge of the parish, where rights of presentation are suspended; ...

"parish" means an ecclesiastical parish;

"place of worship" includes the curtilage of a place of worship.

- (3) In this Part, "church" means—
 - (a) a parish church,
 - (b) any other church or chapel which has been consecrated for the purpose of public worship according to the rites and ceremonies of the Church of England, and
 - (c) a building licensed for public worship according to the rites and ceremonies of the Church of England. ...
- (5) In subsection (3)(b), the reference to a church or chapel does not include a reference to— ...
 - (b) a church or chapel which is not subject to the jurisdiction of the bishop of a diocese, or ...
- (6) In subsection (3)(c), the reference to a building licensed for public worship does not include a reference to a building—
 - (a) which is in a university, college, school, hospital or public or charitable institution but which has not been designated under **section 17(2) of the Mission and Pastoral Measure (Isle of Man) 2012** as a parish centre of worship,
 - (b) which has been excluded from this Part by a direction of the bishop of the diocese with the approval of the advisory committee, or
 - (c) which is used solely for the purpose of religious services relating to burial or cremation.
- (7) A notice, order or other document required by this Part to be served on or sent or given to a person may be served, sent or given by post, by delivering it to the person, or by leaving it at the person's proper address; and for that purpose and the purposes of section 7 of the Interpretation Act

1978, a person's proper address is that person's last known address.

(8) Nothing in this Part prejudices or affects the provisions of any enactment relating to ancient monuments or town and country planning.

PART 4 — FACULTY JURISDICTION

Application of jurisdiction

56 Churches, churchyards and articles

For the avoidance of doubt and without prejudice to the jurisdiction of consistory courts under this Measure or under any other enactment or any rule of law, it is hereby declared that the jurisdiction of the consistory court of a diocese applies to every parish church in the diocese and every churchyard and article appertaining to it.

57 Curtilages of churches

For the avoidance of doubt, it is hereby declared that, where unconsecrated land forms or is part of the curtilage of a church within the jurisdiction of the consistory court, that court has the same jurisdiction over that land as over the church.

58 Buildings licensed for public worship after 1993

- (1) A building licensed by the bishop of a diocese on or after **1 January 1994** for public worship according to the rites and ceremonies of the Church of England and the articles appertaining to the building are subject to the jurisdiction of the consistory court of the diocese as though the building were a consecrated church.
- (2) But where the bishop of a diocese, after consultation with the advisory committee, considers that a building in the diocese licensed as mentioned in subsection (1) should not be subject to the faculty jurisdiction, the bishop may by order direct that subsection (1) is not to apply to the building.
- (3) Subsection (4) applies where, in the case of a building in relation to which an order under subsection (2) is in force, the bishop of the diocese, after consultation with the advisory committee, considers that an article appertaining to the building should be subject to the faculty jurisdiction because it is—
 - (a) of outstanding architectural, artistic, historical or archaeological value,
 - (b) of significant monetary value, or
 - (c) at special risk of being stolen or damaged.
- (4) The bishop may by order direct that the article is to be subject to the jurisdiction of the consistory court of the diocese during such period as the order specifies.

- (5) An article in relation to which an order under subsection (4) is in force is, during the period specified in the order, subject to the jurisdiction of the court as though it were an article appertaining to a consecrated church.
- (6) The bishop of a diocese, after consulting with the advisory committee, may by order vary or revoke an order made under subsection (2) or (4) in relation to the diocese.
- (7) The bishop of a diocese must send each order he or she makes under this section to the registrar of the diocese; and the registrar must file each order in the diocesan registry. ...
- (9) An order under this section which has the effect of subjecting an article to the faculty jurisdiction does not—
 - (a) make unlawful any act done before the order was made, or
 - (b) require the grant of a faculty to confirm such an act.

59 Buildings licensed for public worship before 1994

- (1) This section applies where the bishop of a diocese considers that circumstances have arisen which make it desirable that a building which was licensed for public worship before **1 January 1994** should be subject to the faculty jurisdiction.
- (2) The bishop may by order direct that the building is to be subject to the jurisdiction of the consistory court of the diocese during such period as the order may specify.
- (3) Where an order under this section is made, the building and its furnishings and contents are, during the period specified in the order, to be subject to the jurisdiction of the consistory court of the diocese as though the building were a consecrated church.
- (4) An order under this section does not—
 - (a) make unlawful any act done before the order was made, or
 - (b) require the grant of a faculty to confirm such an act.
- (5) The bishop of a diocese may by order vary or revoke an order made under this section in relation to the diocese.
- (6) The bishop of a diocese must send each order he or she makes under this section to the registrar of the diocese; and the registrar must file each order in the diocesan registry.

Procedure

60 Parties to faculty proceedings

- (1) Proceedings for obtaining a faculty may be brought by—

- (a) the archdeacon ...,
 - (b) the minister and churchwardens of the parish concerned, or
 - (c) any other person appearing to the court to have a sufficient interest in the matter.
- (2) For the purpose of proceedings for obtaining a faculty—
- (a) the archdeacon is to be regarded as having an interest as such;
 - (b) a person whose name is entered on the church electoral roll of the parish concerned but who does not live in the parish is to be regarded as having an interest as if he or she were a parishioner of that parish.
- (3) Subsection (4) applies if—
- (a) the archdeaconry is vacant,
 - (b) the archdeacon is incapacitated by absence or illness, or
 - (c) in the opinion of the bishop, the archdeacon is for any other reason unable or unwilling to act or it would be inappropriate for the archdeacon to act.
- (4) Such other person as the bishop appoints in writing (whether generally or for a particular case) may act in the place of the archdeacon for the purposes of this Measure or of any other enactment relating to the bringing of, or participation in, proceedings in court.
- (5) If the archdeacon or a person appointed under subsection (4) brings or intervenes in proceedings for obtaining a faculty, the costs and expenses properly incurred by him or her or which he or she is ordered by the court to pay are to be paid by the diocesan board of finance
- (6) But a diocesan board of finance is not liable for any sum under subsection (5) unless the bringing of or intervention in the proceedings is approved by the bishop of the diocese in writing after consultation with the diocesan board of finance.
- (7) An order in the proceedings that the costs or expenses of the archdeacon or appointed person are to be paid by another party may be enforced by the diocesan board of finance in the name of the archdeacon or appointed person.

Subject-matter of faculty

61 Vesting of privately owned parts of church

- (1) The consistory court of a diocese may grant a faculty to vest a building forming part of, and physically connected with, a church in the diocese in the person in whom the church is vested.
- (2) Proceedings for obtaining a faculty under this section may be brought only by—

- (a) the incumbent of the benefice to which the parish in which the church is situated belongs, or
 - (b) the PCC for that parish.
- (3) The court may grant a faculty under this section only if it is satisfied of the following four matters.
- (4) The first matter is that—
- (a) the person in whom the church is vested is not the owner entitled to possession of the building, or
 - (b) there is reasonable doubt as to who has a right of ownership or possession over the building.
- (5) The second matter is that the incumbent or PCC, or some other person, has taken all reasonable steps since, or shortly before, the commencement of the proceedings to communicate with every person who may reasonably be supposed to have a right of ownership or possession (whether absolute or limited) over the building.
- (6) The third matter is that—
- (a) despite the steps mentioned in subsection (5) being taken, there has been no communication with any such person as is mentioned in that subsection, or
 - (b) every such person with whom communication has been made and who, on reasonable grounds, claims a right of ownership or possession over the building consents to the grant of the faculty.
- (7) The fourth matter is that, during the seven years immediately before the commencement of the proceedings, no works of repair, redecoration or reconstruction have been carried out on the building by or on behalf of a person claiming title to the building that is adverse to the title of the person in whom the church is vested.
- (8) In proceedings for obtaining a faculty under this section, the court may appoint **an advocate** to represent all the persons, known or unknown, who—
- (a) may have a right of ownership or possession over the building, but
 - (b) are not represented.
- (9) The proper costs of **an advocate** appointed under subsection (8) in the proceedings are to be paid by the person bringing the proceedings, unless the court orders otherwise.
- (10) Where a faculty is granted under this section, the building specified in it is, by virtue of the faculty itself and without any further or other assurance or conveyance, to vest in the person in whom the church is vested as part of the church for all purposes; and any rights of property of any other

person in the building terminate on the grant of the faculty.

62 Demolition of church

- (1) The consistory court of a diocese may not grant a faculty for the demolition or partial demolition of a church otherwise than in accordance with subsection (2), (3) or (4).
- (2) A court may grant a faculty for the demolition or partial demolition of a church if—
 - (a) the court is satisfied that another church or part of a church will be erected on the site or curtilage of the church or part in question, or on part of the site or curtilage, to take the place of the church or part, and
 - (b) the person bringing the proceedings has obtained the written consent of the bishop of the diocese.
- (3) A court may grant a faculty for the partial demolition of a church if—
 - (a) the court is satisfied that the part of the church left standing will be used for public worship according to the rites and ceremonies of the Church of England for a substantial period after the demolition, and
 - (b) the person bringing the proceedings has obtained the written consent of the bishop of the diocese.
- (4) A court may grant a faculty for the partial demolition of a church if it is satisfied that the demolition is necessary for the purposes of the repair or alteration of the church or the reconstruction of the part to be demolished.
- (5) A reference in this section to the partial demolition of a church—
 - (a) is a reference to removal of such part of the church as would, in the opinion of the court, significantly affect its external appearance, and
 - (b) does not include a reference to the destruction or removal of minor or ancillary structures forming part of the building.

63 Emergency demolition of church

- (1) The chancellor of a diocese may by an instrument in writing signed by him or her authorise the demolition of the whole or part of a church in the diocese if the chancellor is satisfied that—
 - (a) the demolition is urgently necessary in the interests of health or safety or for the preservation of the church,
 - (b) it is not practicable to secure health or safety or (as the case may be) the preservation of the church by works of repair or works for affording temporary support or shelter, and

(c) the works to be carried out are limited to the minimum measures immediately necessary.

- (2) An instrument under this section may require the person to whom it is issued (subject to the person obtaining any faculty required) to carry out such works for the restoration of the church following its demolition or partial demolition as the instrument may specify. ...
- (6) The power conferred by this section does not affect any power of a chancellor which was exercisable under a rule of law on **31 December 1993** and is still exercisable on the commencement of this section.

66 Monuments

- (1) The consistory court of a diocese may grant a faculty for the moving, demolition, alteration or carrying out of other work to a monument erected in or on, or on the curtilage of, a church or other consecrated building or on consecrated ground, even if the owner of the monument—
 - (a) withholds consent to the faculty, or
 - (b) cannot be found after reasonable efforts to find him or her have been made.
- (2) The monuments in relation to which a power to grant a faculty under this section is exercisable include a monument erected under or affected by a faculty, whenever granted.
- (3) If the court is satisfied that the matter is of such urgency that it would not be reasonable to require the petitioner to seek the consent of the owner of the monument or to take the steps referred to in subsection (1)(b), it may grant the faculty (even though the consent has not been obtained and those steps have not been taken).
- (4) "Monument" includes a tomb, gravestone or other memorial, and any kerb or setting forming part of it; and a reference to a monument includes a reference to a monument erected after the passing of this Measure.
- (5) "Owner", in relation to a monument, means—
 - (a) the person who erected the monument, or
 - (b) after that person's death, the heir or heirs at law of the person or persons in whose memory the monument was erected.

Powers of court

68 Conditions etc. on grant of faculty

- (1) The conditions subject to which a faculty may be granted include in particular a condition requiring the work authorised or ordered by the faculty (or part of that work) to be carried out under the supervision of the archdeacon or another person nominated by the court granting the faculty.
- (2) In the case of a faculty authorising the disposal of an article, the conditions subject to which the

faculty may be granted include in particular a condition requiring a specified period to elapse before the disposal takes place.

- (3) Where the court grants a faculty to a person other than an archdeacon and considers that the work authorised or ordered by the faculty should be carried out (whether or not by that person), it may also order—
 - (a) that, in default of that person carrying out the work, a faculty is to be granted to the archdeacon authorising him or her to carry out the work, and
 - (b) that, in that event, the expenses incurred by the archdeacon in carrying out the work are to be paid by that person.

69 Costs orders against person responsible for act or default

- (1) This section applies if, in proceedings brought by a person for obtaining a faculty, it appears to the court that another person who is party to the proceedings was responsible wholly or partly for an act or default in consequence of which the proceedings were brought.
- (2) The court may order the whole or part of the costs and expenses of or consequent on the proceedings to be paid by the person responsible.
- (3) The costs and expenses which may be included in an order under this section include costs and expenses incurred in carrying out any work authorised or ordered by the faculty, so far as such costs and expenses have been occasioned by the act or default concerned.
- (4) The court may make an order under this section only if it is satisfied that the proceedings were brought no later than six years after the act or default was committed.

70 Special citation to add party to proceedings

- (1) In proceedings for obtaining a faculty, the court may issue a special citation to add as a party to the proceedings a person alleged to be responsible wholly or in part for an act or default in consequence of which the proceedings were brought, even if the person lives outside the diocese concerned.
- (2) A special citation issued by the court under this section may require the person to whom it is issued to attend the court at the time and place specified in the citation.
- (3) The court may issue a citation under this section only if it is satisfied that the proceedings were brought no later than six years after the act or default was committed.
- (4) A failure to comply without a reasonable excuse with a requirement of a special citation issued by

the court under this section is a contempt of that court.

71 Injunction

- (1) This section applies where at any time, whether before or after proceedings for obtaining a faculty have been brought, it appears to the consistory court of a diocese that a person intends—
 - (a) to commit or continue to commit a relevant act, or
 - (b) to cause or permit the commission or continuance of a relevant act.
- (2) A relevant act is an act in relation to a church or churchyard in the diocese or an article appertaining to a church in the diocese which would be unlawful under ecclesiastical law.
- (3) The court may issue an injunction restraining the person from committing or continuing to commit, or from causing or permitting the commission or continuance of, the relevant act.
- (4) An injunction under this section may be issued—
 - (a) on an application by the archdeacon ...,
 - (b) on an application by any other person appearing to the court to have sufficient interest in the matter, or
 - (c) on the court's own motion.
- (5) A failure to comply without a reasonable excuse with an injunction issued by the court under this section is a contempt of that court.

72 Restoration order

- (1) This section applies where at any time, whether before or after proceedings for obtaining a faculty have been brought, it appears to the consistory court of a diocese that a person—
 - (a) has committed a relevant act, or
 - (b) has caused or permitted the commission of a relevant act.
- (2) A relevant act is an act in relation to a church or churchyard in the diocese or an article appertaining to a church in the diocese which is unlawful under ecclesiastical law.
- (3) The court may make an order (a "restoration order") requiring the person to take such steps as the court considers necessary, within such time as the court specifies, for the purpose of restoring the position so far as possible to what it was immediately before the act was committed.
- (4) A restoration order may be made—
 - (a) on an application by the archdeacon ...,
 - (b) on an application by any other person appearing to the court to have sufficient interest in the matter, or
 - (c) on the court's own motion.

- (5) The court may make a restoration order only if it is satisfied that the proceedings for the order were brought no later than six years after the relevant act was committed.
- (6) A failure to comply without a reasonable excuse with a restoration order made by the court under this section is a contempt of that court.

73 Sections 69, 70 and 72: deliberate concealment of facts

- (1) This section applies where, in proceedings brought by an archdeacon for obtaining a faculty or for a restoration order, a fact relevant to the bringing of the proceedings has been deliberately concealed from him or her.
- (2) The period of six years referred to in each of sections 69(4), 70(3) and 72(5) does not begin to run until the time when the archdeacon discovered the concealment or could with reasonable diligence have discovered it.
- (3) A deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts for the purposes of this section to deliberate concealment of the facts involved in the breach of duty.

Role of archdeacon

74 Exercise of faculty jurisdiction

- (1) The archdeacon ... is to exercise the jurisdiction of the consistory court of the diocese in such faculty matters ..., to such extent and in such manner as rules may specify.
- (2) An archdeacon who exercises jurisdiction under subsection (1) may grant a faculty in any cause of faculty to be considered by him or her which is unopposed.
- (3) A faculty granted by an archdeacon under subsection (2) has effect as if it had been granted by the chancellor of the diocese.
- (4) Subsection (5) applies where, in a cause of faculty to be considered by an archdeacon—
 - (a) he or she declines to grant a faculty,
 - (b) he or she considers that the matter should be dealt with as a matter of urgency without reference to the advisory committee for advice under section 79(2), or
 - (c) the grant of the faculty is opposed.
- (5) The archdeacon must cause the matter to be referred to the chancellor of the diocese for him or her to deal with it.
- (6) This section does not give an archdeacon power—
 - (a) to order a person to pay costs or expenses,
 - (b) to issue an injunction or make a restoration order, or

- (c) to grant an interim faculty pending the final determination of the matter.

- (7) Where an archdeacon considers that a question arises as to the payment of costs or expenses, the issue of an injunction, the making of a restoration order or the grant of an interim faculty, the archdeacon must cause the matter to be referred to the chancellor of the diocese for him or her to deal with it.

75 Grant of licence for temporary minor re-ordering

- (1) The archdeacon ... may grant a licence authorising, without a faculty, the minor re-ordering of a church ... for a temporary period to such extent and in such manner as rules may specify.
- (2) The archdeacon may amend or revoke a licence granted under this section

76 Convening meeting in a case of default

- (1) Where it appears to an archdeacon that something has been done in a parish ... which ought not to have been done without a faculty, the archdeacon may convene an extraordinary meeting of the PCC, or an extraordinary parochial church meeting, in order to discuss the matter.
- (2) The archdeacon must either take the chair or appoint a person to chair the meeting.
- (3) The chair of the meeting, unless otherwise entitled to attend the meeting, is not entitled to vote on any resolution before the meeting.

Cases where faculty not required

77 Power to specify matters in rules

- (1) Rules may specify matters within the jurisdiction of a consistory court which may be undertaken without a faculty; but this is subject to subsection (7).
- (2) The rules may specify conditions which may be imposed on the undertaking of such a matter; and different conditions may be specified in relation to different matters.
- (3) The conditions may in particular include—
 - (a) a condition that the archdeacon is consulted on the proposal to undertake the matter and that it may be undertaken without a faculty only if the archdeacon gives notice in writing that it may be undertaken without a faculty, and
 - (b) a condition that, if the archdeacon gives notice as mentioned in paragraph (a), the archdeacon may make the undertaking of the matter subject to such additional conditions as he or she may specify in the notice.
- (4) The rules may require that, where the archdeacon is consulted as mentioned in subsection (3)(a), he

or she must seek the advice of the advisory committee or such of its members or officers as he or she thinks fit before deciding whether to give notice as mentioned in subsection (3)(a).

- (5) Where the archdeacon decides not to give notice as mentioned in subsection (3)(a) —
 - (a) the decision must be recorded in writing, and
 - (b) the matter in question may not be undertaken without a faculty.
- (6) Where the archdeacon is the incumbent or priest in charge of the benefice in which it is proposed to undertake the matter, references in subsections (3) to (5) to the archdeacon are to be read as references to the chancellor.
- (7) Subsection (1) does not apply to the following matters— ...
 - (d) works which involve the extension, demolition or partial demolition of a building or the erection of a new building;
 - (e) a matter which gives rise to a question of law or doctrine, ritual or ceremonial or which would, if undertaken, affect a person’s legal rights;
 - (f) the exhumation or other disturbance of human remains; ...
 - (h) the sale or other disposal of an article of architectural, archaeological, artistic or historic interest; ...
 - (j) the introduction of an aumbry or another receptacle used for the reservation of the sacrament of Holy Communion;
 - (k) the introduction of a monument, or the carrying out of work to a monument erected in or on, or on the curtilage of, a church or other consecrated building or on consecrated ground. ...
- (9) The reference in subsection (7)(e) to a matter affecting a person’s legal rights does not include a reference to the grant of a licence for the grazing of a churchyard by livestock.
- (10) Any question as to whether a particular matter is, or is not, a matter that is specified by virtue of subsection (1) is to be determined by the consistory court of the diocese concerned.
- (11) Section 62(5)(which defines references to partial demolition in relation to a church) applies for the purposes of this section in relation to any building.

78 Power of chancellor to specify matters

- (1) The chancellor of a diocese may by order provide that a matter specified in the order may be undertaken without a faculty (in addition to the matters that are specified in rules by virtue of section 77(1)).

- (2) An order under subsection (1) —
 - (a) may specify a matter only if it could be specified in rules by virtue of section 77(1) ;
 - (b) may specify such conditions as may be specified in rules by virtue of section 77(2) ;
 - (c) may apply to the whole or a specified part of the diocese.
- (3) Where the chancellor of a diocese considers that there are special circumstances affecting a parish or church, churchyard or other building or place in the diocese which justify doing so, he or she may by order provide that a matter specified in the order may not be undertaken without a faculty even though it is a matter that is specified by virtue of section 77(1).
- (4) The chancellor of a diocese must seek the advice of the advisory committee before making an order under subsection (1) or (3), unless he or she is satisfied that the matter is sufficiently urgent to justify making an order without obtaining the committee’s advice.
- (5) The chancellor of a diocese must send each order he or she makes under subsection (1) or (3) to the registrar of the diocese; and the registrar must file each order in the diocesan registry.
- (6) Where an order is made under subsection (3), the registrar must serve a copy of the order on—
 - (a) the minister and churchwardens of every parish affected by the order,
 - (b) **the archdeacon, and**
 - (c) the secretary of the advisory committee.
- (7) Any churchwardens on whom a copy of an order is served under subsection (6) must—
 - (a) keep it with the inventory maintained under section 49(1), and
 - (b) insert a copy of it in the log-book maintained under section 49(2).
- (8) The chancellor of a diocese may by order vary or revoke an order made under subsection (1) or (3) in relation to the diocese; and a reference in this section to an order under subsection (1) or (3) includes a reference to an order varying or revoking the order.

Supplementary

79 Consultation with advisory committee

- (1) The chancellor of a diocese must seek the advice of the advisory committee before making a final determination in proceedings for obtaining a faculty, issuing a permanent injunction under section 71 or making a restoration order unless—
 - (a) the action proposed relates exclusively to exhumation ..., or

- (b) the chancellor is satisfied that the matter is sufficiently urgent to justify granting a faculty, issuing an injunction or making a restoration order without obtaining the committee's advice.
- (2) An archdeacon must seek the advice of the advisory committee before making a final determination in proceedings for obtaining a faculty, unless the action proposed relates exclusively to exhumation
- (3) In each diocese, the secretary to the advisory committee—
 - (a) must compile and maintain a register of all petitions for a faculty referred to the committee for advice under this section, and
 - (b) must ensure that the register is available for inspection by the public by prior appointment at such place in the diocese as the bishop of the diocese may designate.
- (4) Rules may specify further circumstances in which, or further matters in respect of which, the duty imposed on a chancellor by subsection (1) does not apply.

Interpretation

80 Interpretation of Part 4

- (1) In this Part, unless otherwise indicated—
 - "advisory committee" means the Diocesan Advisory Committee; ...
 - "article" includes anything affixed to land or a building, and a reference to an article includes a reference to part of an article;
 - "building" includes a structure or erection, and a reference to a building includes a reference to part of a building;
 - "church" includes a building which is licensed for public worship according to the rites and ceremonies of the Church of England and is subject to the faculty jurisdiction;
 - "land" includes buildings but, subject to that, the definition of that word in Schedule 1 to the Interpretation Act 1978 does not apply;
 - "minister", in the case of a parish in which a special cure of souls has been assigned to a vicar in a team ministry by a scheme under the Mission and Pastoral Measure (Isle of Man) 2012 or by licence from the bishop, means that vicar;
 - "minister", in the case of a parish not of that description, means—
 - (a) the incumbent of the benefice comprising the parish, or
 - (b) a curate licensed to the charge of the parish or a minister acting as priest-in-

charge of the parish, where rights of presentation are suspended;

"parish" means an ecclesiastical parish; ...
 "restoration order" has the meaning given in section 72.

- (2) A notice, order or other document required by this Part to be served on or sent or given to a person may be served, sent or given by post, by delivering it to the person, or by leaving it at the person's proper address; and for that purpose and the purposes of section 7 of the Interpretation Act 1978, a person's proper address is that person's last known address.
- (3) **Nothing in this Part prejudices or affects the provisions of any enactment relating to ancient monuments or town and country planning.**

PART 5 — MISCELLANEOUS

Rules

83 Legislative Committee: powers to make rules

- (1) **The Legislative Committee of the Sodor and Man Diocesan Synod** may make rules for carrying into effect the relevant provisions; and for this purpose "relevant provision" means a provision of any of the following—
 - (a) Parts 1, 3 and 4 and this Part of this Measure (subject to subsection (6));
 - (b) the Ecclesiastical Jurisdiction Measure 1963;
 - (c) the Clergy Discipline Measure 2003; ...
 - (e) **section 9C of the Churchwardens Measure (Isle of Man) 2013;**
 - (f) **rule 46D of the Church Representation Rules;**
 - (g) **provision made by Canon to confer a right of appeal against the suspension of a licence to exercise the office of reader or of a licence to serve as a lay worker.**
- (2) Rules under subsection (1) may in particular (so far as the following matters are not regulated by a relevant provision or by rules under section 4 of the Church of England (Legal Aid) Measure 1994) make provision for—
 - (a) regulating the procedure and practice (including the mode and burden of proof and admissibility of evidence) of an ecclesiastical court;
 - (b) the appointment and duties of officers of an ecclesiastical court;
 - (c) the procedure and practice where an archdeacon has jurisdiction in faculty matters under section 74;
 - (d) the procedure and practice where complaints are referred to a registrar under section 11 of the Clergy Discipline Measure 2003;

- (e) the time within which an act required or permitted by a relevant provision is to be done;
 - (f) matters relating to the appointment of authorised complainants and prosecutors in connection with proceedings or contemplated proceedings under a relevant provision;
 - (g) the forms of complaint for bringing proceedings under a relevant provision and of answers to be made to complaints;
 - (h) any other form or notice required in connection with a relevant provision;
 - (i) the mode of effecting service of a complaint, article or other document including provision for substituted service;
 - (j) the fixing of the time and place of a hearing or trial and the notification of the parties;
 - (k) the passing of censures and the forms of certificates of findings;
 - (l) matters relating to costs, fees and expenses in relation to proceedings under a relevant provision;
 - (m) enabling evidence to be obtained of compliance with a relevant provision;
 - (n) a matter which may be specified in rules in accordance with a relevant provision.
- (3) The **Legislative Committee** may also make rules containing provision for enabling a PCC, after consultation with the advisory committee of the diocese concerned, to deposit (without a faculty) a movable article appertaining to a church in the parish for safekeeping in a place approved for the purpose by specified persons, subject to such requirements, terms and conditions as may be specified or as may be determined by the specified persons. ...
- (5) The **Legislative Committee** may also make rules containing provision for the safekeeping, care, inspection and preservation of books and other documents which, in the opinion of a specified person, are of historic interest to the Church of England; and the provision which may be made includes provision for the appointment of persons with duties in that respect.
- (5A) Rules made under this section may provide that rules made under this section as it has effect in England shall have effect in the Isle of Man subject to such modifications as may be prescribed.**
- (6) In subsection (1)(a), the reference to provisions of this Measure does not include a reference to—
- (a) section 22(7) to (10)(certain vacancies in see),
 - (b) sections 45 to 47 (inspections), ...
 - (d) **section 87** (fees), or

(e) sections 88 to 91 (burials).

- (7) In subsection (2)(a) and (b), "ecclesiastical court" means a court, disciplinary tribunal, commission or committee provided for in a provision referred to in subsection (1)(a) to (d) ; but subsection (2)(a) and (b) does not apply to a court of appellate jurisdiction in so far as rules made by the Judicial Committee of the Privy Council provide for the matters in question in the case of that court.
- (8) In subsection (5), the reference to books and other documents does not include a reference to register books or records within the meaning of **the Church Records Measure (Isle of Man) 2000**.
- (9) Rules under this section shall not have effect unless they are approved by the Sodor and Man Diocesan Synod, and shall be laid before Tynwald as soon as may be after they are so approved.**

Fees

87 Fees: power of chancellor

- (1) Where a faculty is or has been granted for a relevant purpose, the chancellor of the diocese may determine the amount of the fees payable to the PCC or the diocesan board of finance.
- (2) Each of the following is a relevant purpose—
 - (a) the introduction of a monument in a church;
 - (b) an additional inscription on a monument in a church;
 - (c) the erection of a monument in a churchyard;
 - (d) an additional inscription on a monument in a churchyard; ...
 - (f) the construction of a vault;
 - (g) the burial of cremated remains in or under a church or in a closed churchyard.
- (3) The reference in subsection (1) to a faculty is, where the relevant purpose is within subsection (2)(c), (d) or (g), a reference to a particular (as opposed to general) faculty.
- (4) **In this section "monument" has the same meaning as in Schedule 1 to the Church Fees Measure (Isle of Man) 2014.**
- (5) This section does not affect any power which exists apart from this section.

Burials and consecration

88 Burials in parish burial ground

...

- (2) A person who has a right of burial in the churchyard or other burial ground of a parish has a right to have his or her cremated remains buried there.

- (3) But subsection (2) does not give a person a right to have his or her cremated remains buried in a churchyard or burial ground in which burials have been discontinued by **an order under section 5 of the Burials Act 1986 (an Act of Tynwald)** except—
- (a) in accordance with a faculty authorising the burial, or
 - (b) in an area which has been set aside by a faculty for the burial of cremated remains generally. ...
- (6) For the avoidance of doubt it is hereby declared that the bishop of a diocese may consecrate land in the diocese for the sole purpose of the burial of cremated remains.

89 Consecration of ground added to churchyard

- (1) This section applies where ground adjoining a churchyard has been or is added to it.
- (2) The bishop of the diocese may, at the churchyard or in the church to which the ground belongs, sign an instrument declaring and recording the consecration of the ground, without the need for the chancellor or registrar of the diocese to be present.
- (3) The instrument must be in the form of a plan of the ground with the following endorsement—
"I, ..., Bishop of ... , do hereby declare and record the ground added to the churchyard of ... , as on the plan, to be consecrated ground and part of the churchyard."
- (4) The instrument is to be treated as signed by the bishop of the diocese if it is signed by a bishop nominated by him or her for the purposes of this section (whether another diocesan bishop or a suffragan or assistant bishop).
- (5) The signature on the instrument must be witnessed by—
 - (a) the chancellor,
 - (b) a surrogate,
 - (c) a clerk in Holy Orders beneficed or licensed to serve in the diocese, or
 - (d) the churchwardens of the church concerned.
- (6) Once the instrument, having been signed and witnessed, is deposited in the registry of the diocese, it has the same effect as a sentence of consecration.

90 Reservation of right to burial in land added to churchyard

- (1) This section applies where a person, by way of a gift, transfers land which is to be added to a consecrated churchyard as referred to in section 89; and it does not matter whether or not the

person resides in the parish in which the churchyard is situated.

- (2) The person may reserve the exclusive right in perpetuity of burial and of placing monuments and gravestones in a part of the added land; but that part must not exceed one-sixth of the area of the whole of the added land.
- (3) Where the right under subsection (2) is reserved, the part in question must be shown and coloured on the plan referred to in section 89.
- (4) A memorandum in the following form must be written on the instrument referred to in that section—

"We, ... (Rector, Vicar or Incumbent) and ... and ..., Churchwardens, of ... declare the piece of land (insert description and measurement), and coloured ... on this plan, to be the burial place of ..., the giver of the land added to the churchyard of ... , his or her heirs and assigns.

Signed ...

Witnessed ...

Dated ..."

- (5) The memorandum must be signed by the incumbent and churchwardens of the parish in which the churchyard is situated, with each signature being witnessed; and the memorandum must specify the date on which it is signed and witnessed.
- (6) Once the memorandum has been signed and witnessed, and the land has been declared to be consecrated, the memorandum operates as an exclusive right in perpetuity in the specified land.
- (7) The right forms part of the real estate of the person who reserved the right or of any successor in title to the right.
- (8) The costs of preparing and executing the memorandum are to be borne by the person by whom the reservation is made.
- (9) "Land" includes messuages, tenements and hereditaments, houses and buildings of any tenure.

91 Conditions on reservation under section 90

- (1) A body may not be buried in the land in which a right is reserved under section 90, nor may a monument or gravestone be placed on the land, without the consent of the person who is for the time being the owner of the right.
- (2) But consent is not required under subsection (1) for the burial of a deceased owner, or of a spouse or widow or widower of a deceased owner who has been or is about to be buried in the land.
- (3) The bishop of the diocese, or any person acting under the bishop's authority, has the same right to object to the placing of a monumental inscription

within the reserved ground and to procure its removal as the bishop has to object to a monumental inscription in any consecrated ground and to procure its removal.

- (4) The land in which a right is reserved under section 90 may not be included in an **order under section 5 of the Burials Act 1986 (an Act of Tynwald)** which provides for the discontinuance of burials in the churchyard to which the land belongs.
- (5) **But an order under the said section 5 may discontinue burials in the land if it appears to the Department of Environment, Food and Agriculture that further burials in the land would be prejudicial to public health.**

92 Power of bishop to remove legal effects of consecration

- (1) This section applies where the bishop of a diocese, on the application of the archdeacon ... in relation to a building or land ... which is subject to the legal effects of consecration, is satisfied that—
- (a) the building or land is not held or controlled by an ecclesiastical corporation, **the churchwardens of a parish jointly with any such corporation** or a diocesan board of finance, and
- (b) no purpose will be served by its remaining subject to the legal effects of consecration.
- (2) The bishop may by order direct that the building or land or part of it is not to be subject to the legal effects of consecration; and, accordingly, where an order under this section is made, the faculty jurisdiction ceases to extend to the building or land or part concerned.
- (3) An order under this section may impose such conditions or requirements as the bishop thinks fit as to—
- (a) the preservation or disposal of any human remains believed to be buried in or beneath a building affected by the order or in land affected by it and of any tombstones, monuments or memorials commemorating the deceased persons;
- (b) the maintenance of orderly behaviour in or on the building or land affected by the order.
- (4) For the purposes of subsection (3)(a), the order may apply to the building or land such provisions of **section 21 of and Schedule 4 to the Mission and Pastoral Measure (Isle of Man) 2012** (disposal of human remains) as are specified in the order, with or without modifications or adaptations.
- (5) A condition or requirement within subsection (3)(a) may not be imposed by an order under this section except with the consent of the **Department of Environment, Food and Agriculture.**

- (6) A condition or requirement imposed by an order under this section is enforceable as if—
- (a) the archdeacon were the owner of the adjacent land, and
- (b) the condition or requirement were a negative covenant expressed to be entered into for the benefit of that adjacent land.
- (7) For the purposes of subsection (6), the enforcement of a condition or requirement is to be regarded as being for the benefit of the archdeacon.
- (8) **Section 1 of the Conveyancing Act 1983 (an Act of Tynwald) (which enables the court to discharge or modify restrictions affecting land) does not apply in relation to a condition or requirement imposed by an order under this section.**
- (9) **Subsection (6) is subject to section 29 (registration of encumbrances) of the Registration of Deeds Act 1961 (an Act of Tynwald) and to the provisions of the Land Registration Act 1982 (an Act of Tynwald).**
- (9A) **For the purposes of section 11(1) of the said Act of 1961 the archdeacon shall be deemed to be a person legally or beneficially interested in the building or land affected; and for the purposes of the said Act of 1982 a condition or requirement shall be treated as falling within Part I of Schedule 6 (registrable burdens) to that Act.**
- (10) The bishop must send each order he or she makes under this section to the registrar of the diocese; and the registrar must file each order in the diocesan registry. ...
- (13) "Ecclesiastical corporation" means a corporation in the Church of England, whether sole or aggregate, established for spiritual purposes.
- (15) The definition of "land" in Schedule 1 to the Interpretation Act 1978 does not apply to this section.

93 Section 92: application to Crown land

- (1) Section 92 applies to Crown land and to buildings situated on Crown land as it applies to other land and buildings.
- (2) But a condition or requirement within section 92(3)(b) may not be imposed by an order under section 92 in relation to Crown land or a building situated on Crown land without the consent of the appropriate authority.
- (3) For the purposes of subsection (2), land which is used for the purposes of the Church of England and which will become Crown land on ceasing to be so used or on the exercise of a right of re-entry is to be treated as Crown land.
- (4) **In this section —**

"the appropriate authority" means —

- (a) **in relation to Crown land vested in or managed by a Department or Statutory Board or a government department of the United Kingdom, that Department, Board or department;**
- (b) **in relation to any other Crown land, the Council of Ministers;**

and, if any question arises as to what authority is the appropriate authority in relation to any land or building, that question shall be referred to the Council of Ministers, whose decision shall be final;

"Crown land" means land in which there is an interest belonging to or held in trust for Her Majesty;

"Department" and "Statutory Board" have the meanings given by the Interpretation Act 2015 (an Act of Tynwald).

PART 6 — GENERAL

Interpretation

95 Interpretation

- (1) In this Measure, unless otherwise indicated—
 - "archdeacon" means the Archdeacon of Man; ...**
 - "churchyard" includes any burial ground, or part of a burial ground, which is consecrated ground, but does not include a cemetery provided under the Douglas Cemetery Act 1895;**
 - "communicant" has the meaning given in subsection (2) below; ...
 - "diocesan board of finance" means the Sodor and Man Diocesan Board of Finance;**
 - "the High Court" means the High Court of Justice of the Isle of Man;**
 - "high judicial office" has the meaning given in subsection (3) below;
 - "PCC" means parochial church council;
 - "prescribed" means prescribed by rules;**
 - "rules" means rules under section 83.
- (2) "Communicant" means a person who has received communion according to the use of the Church of England or of a church in communion with it—
 - (a) at least once in the twelve months before the date of the person's declaration that he or she fulfils that requirement, or
 - (b) if a declaration is not required of the person, at least once in the twelve months before the

date on which he or she is offered an appointment or requested to act in a capacity for which that qualification is required.

- (3) "High judicial office" means—
 - (a) high judicial office within the meaning of Part 3 of the Constitutional Reform Act 2005 (see section 60(2) of that Act), or
 - (b) membership of the Judicial Committee of the Privy Council.
- (3A) **References in this Measure to a Measure (including this Measure) or to a provision of a Measure are to that Measure or provision as it has effect in the Isle of Man.**
- (3B) **References in this Measure to the commencement of any provision of this Measure are to the date on which the provision is extended to the Isle of Man. ...**

Ancillary provision

96 Consequential amendments

- (1) Schedule 3 (which contains consequential amendments) has effect.
- (2) An amendment made by that Schedule to rules or to an order does not affect the power to make further rules or a further order amending or revoking the provision made by the amendment.

97 Transitional, saving and transitory provision

Schedule 4 (which contains transitional, saving and transitory provision) has effect.

98 Repeals and revocations

Schedule 5 (which contains repeals and revocations) has effect.

Final provision

101 Short title

This Measure may be cited as the Ecclesiastical Jurisdiction and Care of Churches Measure 2018.

SCHEDULE 1

OTHER ECCLESIASTICAL JURISDICTIONS

Amendments of the Ecclesiastical Jurisdiction Measure 1963

- 2 The Ecclesiastical Jurisdiction Measure 1963 is amended as follows.
- 3 (1) Section 1 (the ecclesiastical courts) is amended as follows.
 - (2) Omit subsections (1) and (2).
 - (3) In subsection (3) —
 - (a) for "the said provinces" substitute "the provinces of Canterbury and York", and

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| <p>(b) omit paragraphs (b) and (d) and the "and" preceding paragraph (d).</p> <p>4 Omit section 2 (judge of consistory court).</p> <p>6 (1) Section 3 (judges of the Arches and Chancery Courts) is amended as follows.</p> <p>(2) In subsection (1), after "respectively" insert "for the purposes of proceedings on an appeal under section 20 of the Clergy Discipline Measure 2003".</p> <p>(3) In subsection (2) —</p> <p>(a) for paragraphs (a) and (b) substitute—</p> <p style="padding-left: 40px;">"(a) one shall be the Dean of the Arches and Auditor;</p> <p style="padding-left: 40px;">(b) four shall be appointed in accordance with section 20(2) and (3) of the Clergy Discipline Measure 2003.", and</p> <p>(b) omit paragraph (d).</p> <p>(4) Omit subsections (3) to (6).</p> <p>(5) In subsection (7)(a), for "the said oaths" substitute "the oaths set out in Part 1 of Schedule 1 to this Measure".</p> <p>(6) In subsection (8), for "either of the two last foregoing subsections" substitute "subsection (7)".</p> <p>7 Omit section 4 (appointment of deputy judges of consistory court).</p> <p>8 Omit section 5 (judges of the Ecclesiastical Causes Reserved).</p> <p>9 Omit section 6 (jurisdiction of consistory court).</p> <p>10 (1) Section 7 (jurisdiction of the Arches and Chancery Courts) is amended as follows.</p> <p>(2) Omit subsection (1).</p> <p>(3) In subsection (1B) —</p> <p>(a) for "Each of the said Courts shall also" substitute "The Arches Court of Canterbury and the Chancery Court of York shall each",</p> <p style="padding-left: 40px;">...</p> <p>(4) In subsection (2) —</p> <p>(a) in paragraph (a), omit "in a disciplinary case,", and</p> <p>(b) omit paragraph (b).</p> <p>(5) Omit subsections (4) and (5).</p> <p>11 Omit section 8 (appellate jurisdiction of Her Majesty in Council).</p> <p>12 In section 10 (jurisdiction of Court of Ecclesiastical Causes Reserved), omit subsections (A1), (1)(b) and (2) to (6).</p> | <p>13 In section 11 (the title to which becomes "Jurisdiction of Her Majesty to review findings of Court of Ecclesiastical Causes Reserved"), omit subsection (2)(b).</p> <p>14 For section 12 substitute—</p> <p><i>"12 Disciplinary tribunals to be unaffected by vacation of see</i></p> <p>(1) The vacation of the see of Canterbury or York or of the bishop of any other diocese shall not render a disciplinary tribunal unable to exercise its jurisdiction, and no such vacancy shall affect the discharge by the members or officers of such a tribunal of their functions.</p> <p>(2) For provision as to the Arches Court of Canterbury, the Chancery Court of York and the Vicar-General's court of each province where there is a vacation of see as mentioned in subsection (1), see section 22 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018."</p> <p>15 Omit section 13 (certain judges to be ex officio officials principal).</p> <p>16 Omit section 46 (proceedings in consistory court).</p> <p>17 In section 47 (proceedings in Arches and Chancery Courts), in subsection (1A), omit ", including any directions under section 7(4) of this Measure".</p> <p>18 (1) Section 48 (proceedings before Commission of Review) is amended as follows.</p> <p>(2) In subsection (1), after "a Commission of Review" insert "exercising jurisdiction under this Measure".</p> <p>(3) In subsection (2), after "in reviewing" insert "under this Measure".</p> <p>(4) In subsection (3), after "a Commission of Review" insert "under this Measure".</p> <p>(5) In subsection (6) —</p> <p>(a) after "a previous Commission of Review" insert "under this Measure or the Ecclesiastical Jurisdiction and Care of Churches Measure 2018", and</p> <p>(b) after "subsequently appointed" insert "under this Measure". ...</p> <p>20 (1) Section 60 (powers of courts and commissions in regard to costs) is amended as follows. ...</p> <p>(3) In subsection (2), for the words from the beginning to "examiner" substitute "A court or commission exercising jurisdiction under this Measure, a Vicar-General's court as constituted</p> |
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- under the Clergy Discipline Measure 2003, or a committee under this Measure". ...
- 22 In section 69 (criminal proceedings) —
- (a) omit "in the consistory court of a diocese or", and
- (b) for "those Parts" substitute "that Part".
- 23 In section 80 (place where courts etc. to sit) —
- (a) for "Any court, commission, committee or inquiry established or held by or under the provisions of this Measure" substitute "Proceedings in a court or commission exercising jurisdiction under this Measure or of a committee or inquiry under this Measure", and ...
- 24 (1) Section 81 (evidence and general powers and rights of courts and commissions) is amended as follows.
- (2) In subsection (1) —
- (a) for "established" substitute "exercising jurisdiction", and ...
- (3) In subsection (2), omit "or Vicar-General's court".
- (4) Omit subsection (4).

SCHEDULE 2

*DIOCESAN ADVISORY COMMITTEE:
CONSTITUTION*

Name

1 *The committee is known as the **Sodor and Man** Diocesan Advisory Committee.*

Membership: appointment

- 2 (1) *The committee consists of—*
- (a) *a chair,*
- (b) *the archdeacon ..., and*
- (c) *at least 5 other members.*
- (2) *The chair is appointed by the bishop of the diocese after consultation with—*
- (a) *the standing committee of the diocesan synod,*
- (b) *the chancellor of the diocese.*
- (3) *The other members are—*
- (a) *two persons appointed by the standing committee of the diocesan synod from among the elected members of the diocesan synod,*
- (b) *at least 3 other persons appointed by the standing committee of the diocesan synod ... and*

- (c) *such other persons as may be co-opted under paragraph 5.*
- (4) In making an appointment under sub-paragraph (3)(b), the **standing committee** must ensure that the persons so appointed have between them—
- (a) *knowledge of the history, development and use of church buildings,*
- (b) *knowledge of Church of England liturgy and worship,*
- (c) *knowledge of architecture, archaeology, art and history, and*
- (d) *experience of the care of historic buildings and their contents.*
- (5) *The first appointments of the chair and of other members under sub-paragraph (3)(a) and (b) take place as soon as practicable.*
- (6) *Subsequent new appointments of the chair or of a member under sub-paragraph (3)(a) or (b) must be made within the period of one year following the formation of the second new diocesan synod after the latest appointments.*

Membership: term of office

- 3 (1) *The term of office of the chair or a member appointed under paragraph 2(3)(a) or (b) begins with the appointment and ends with the making of a new appointment under paragraph 2(6).*
- (2) *A member of the committee who ceases to hold a qualification by virtue of which he or she became a member ceases to be a member on ceasing to hold the qualification.*
- (3) *A member of the committee who ceases to hold office otherwise than by virtue of sub-paragraph (2) is eligible for reappointment.*

Membership: casual vacancies

- 4 (1) *Where a casual vacancy occurs among the chair and other members appointed under paragraph 2(3)(a) and (b), the bishop must appoint a person to fill the vacancy.*
- (2) *If the person whose place is to be filled was a member of the committee by virtue of being a member of the diocesan synod, the person appointed under sub-paragraph (1) must also be a member of that diocesan synod.*
- (3) *If the person whose place is to be filled was appointed under sub-paragraph (i), (ii) or (iii) of paragraph 2(3)(b), the bishop must, before appointing a person to fill the vacancy, undertake the consultation required under the sub-paragraph concerned.*
- (4) *A person appointed to fill a casual vacancy holds office only for the unexpired portion of*

the term of office of the person whose place is being filled.

Membership: co-opting

- 5 (1) *The committee may, with the consent of the bishop, from time to time co-opt such persons as it thinks fit to be additional members of the committee.*
- (2) *The number of persons appointed under this paragraph must not exceed one-third of the total number of the other members.*
- (3) *A person co-opted ceases to be a member of the committee on the making of new appointments of members under paragraph 2(6).*

Consultants

- 6 *The bishop may appoint suitably qualified persons to act as consultants to the committee if the committee requests the bishop to do so.*

Secretary

- 7 *The secretary to the committee is appointed by the bishop after consultation with—*
- (a) *the chair, and*
- (b) *the archdeacon.*

NOTE Schedule 2 is not yet in force. For the constitution of the DAC see Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s.2.

SCHEDULE 3

CONSEQUENTIAL AMENDMENTS

PART 1

PRIMARY LEGISLATION

Ecclesiastical Jurisdiction Measure 1963

- 4 The Ecclesiastical Jurisdiction Measure 1963 is amended as follows.
- 6 In section 66(1)(interpretation), in the definition of "prescribed" for "section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991" substitute "section 83 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018".

Overseas and Other Clergy (Ministry and Ordination) Measure 1967

- 7 In each of the following provisions in the Overseas and Other Clergy (Ministry and Ordination) Measure 1967, for "the Ecclesiastical Jurisdiction Measure 1963" substitute "the Clergy Discipline Measure 2003"—
- (a) section 1(6)(officiating as priest or deacon without permission) ;

- (b) section 4(3)(unlawful performance of episcopal functions).

Synodical Government Measure 1969

- 8 In the Church Representation Rules in Schedule 3 to the Synodical Government Measure 1969, in rule 9 (business of annual parochial church meeting), in paragraph (1), for sub-paragraph (d)(but not the following "and") substitute—

"(d) the annual fabric report under section 50 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018;".

Clergy Discipline Measure 2003

- 11 The Clergy Discipline Measure 2003 is amended as follows.
- 12 In section 5(3)(registrar of tribunals: term of office), for "section 5 of the Ecclesiastical Judges and Legal Officers Measure 1976 (1976 No 2) " substitute "section 32(1) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018".
- 13 In section 43(1)(interpretation), in the definition of "prescribed" for "section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (1991 No 1) " substitute "section 83 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018".

PART 2

PROCEDURAL RULES

Ecclesiastical Jurisdiction (Discipline) Rules 1964 (S.I. 1964/1755)

- 24 The Ecclesiastical Jurisdiction (Discipline) Rules 1964 (as applied by the **Ecclesiastical Jurisdiction Rules (Isle of Man) 1995**) are amended as follows.
- 25 In rule 2(1)(interpretation) —
- (a) in the definition of "the Dean of the Arches and Auditor", for "section 4 of the Measure" substitute "section 12 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018",
- (b) in the definition of "the judge of the consistory court", for "section 4 of the Measure" substitute "section 4 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018".
- 26 The following are revoked—
- (a) rules 5 to 18 (proceedings against priest or deacon for offence not involving doctrine etc.) ;
- (b) rules 19 to 28 (proceedings against bishop for offence not involving doctrine etc.) ;
- (c) rules 39 to 43 (appeal from consistory court) ;

(d) rule 52 (deprivation following proceedings in secular court) ;

(e) Forms 8 to 28 and 38 to 41.

Faculty Jurisdiction Rules 2015 (S.I. 2015/1568)

36 The Faculty Jurisdiction Rules 2015 (as applied by rule 21.1 of the Faculty Jurisdiction Rules (Isle of Man) 2016) are amended as follows.

37 (1) In rule 2.2 (interpretation), paragraph (1) is amended as follows.

(2) In the definition of "costs", for "section 13(1) " substitute "section 69(2) ".

(3) In the definition of "injunction", for "section 13(4) " substitute "section 71".

(4) In the definition of "the Measure" for "the Care of Churches and Ecclesiastical Jurisdiction Measure 1991" substitute "the Ecclesiastical Jurisdiction and Care of Churches Measure 2018". ...

(8) In the definition of "restoration order", for "section 13(5) " substitute "section 72".

49 In rule 21.2 (appeals: interpretation), omit each of the following—

(a) the definition of "interim order";

(b) the definition of "permission to appeal".

SCHEDULE 4

TRANSITIONAL, SAVING AND TRANSITORY PROVISIONS

PART 1

TRANSITIONAL AND SAVING PROVISIONS

Continuity of the law

1 The repeal and re-enactment of provisions by this Measure does not affect the continuity of the law.

2 A reference, express or implied, in this Measure, another enactment or an instrument or document, to a provision of this Measure is, subject to its context, to be read as being or including a reference to the corresponding provision repealed by this Measure, in relation to times, circumstances or purposes in relation to which the repealed provision had effect.

3 A reference, express or implied, in an enactment, instrument or document to a provision repealed by this Measure is, subject to its context, to be read as being or including a reference to the corresponding provision of this Measure, in relation to times, circumstances or purposes in relation to which the corresponding provision has effect.

4 Any subordinate legislation made, any appointment or nomination made or any other thing done, or having effect as if made or done, under (or for the purposes of or in reliance on) a provision repealed and re-enacted by this Measure, and in force or effective immediately before the commencement of the corresponding provision of this Measure, has effect after that commencement as if made or done under (or for the purposes of or in reliance on) that corresponding provision.

5 Paragraphs 1 to 4 have effect in place of section 17(2) of the Interpretation Act 1978; but nothing in this Schedule affects any other provision of that Act.

Effect of previous transitionals and savings

6 The repeals made by this Measure do not affect the operation of a transitional provision or saving relating to the commencement of a provision reproduced in this Measure so far as the transitional provision or saving is not specifically reproduced in this Measure but remains capable of having effect in relation to the corresponding provision of this Measure or otherwise.

7 (1) The repeal by this Measure of a provision previously repealed subject to savings does not affect the continued operation of those savings.

(2) The repeal by this Measure of a saving on the previous repeal of a provision does not affect the operation of the saving in so far as it is not specifically reproduced in this Measure but remains capable of having effect.

Use of existing forms etc.

8 A reference to a provision repealed by this Measure which is contained in a form or other document made, served, granted or issued after the commencement of the repeal is, subject to its context, to be read as being or including a reference to the corresponding provision of this Measure.

Duplicated repeals

9 (1) This paragraph applies in relation to a provision, the repeal of which is provided for both by this Measure and by the Statute Law (Repeals) Measure 2018.

(2) If the repeal of the provision by this Measure comes into force before its repeal by the Statute Law (Repeals) Measure 2018 has come into force, the entry for that provision in the Schedule to that Measure is itself repealed.

SCHEDULE 5

REPEALS AND REVOCATIONS

[omitted]